

DOCUMENT RESUME

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[Protest against Rejection of Late Proposal]. B-199184. August 8, 1977. 3 pp.

Description: Eugene M. Keane; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Forest Service.

Authority: F.P.R. 1-2.303-7. F.P.R. 1-2.402. 40 Comp. Gen. 709.
40 Comp. Gen. 711. 55 Comp. Gen. 267. 55 Comp. Gen. 272.

The protester objected to the rejection of his bid as late. The hand-carried bid, delivered after the bid opening officer verified the accuracy of his wristwatch, announced that the time for bid opening had arrived, and opened and read three bids, may not be considered on the basis of the clock in the reception area, unless there is evidence presented to demonstrate that the bid was delivered prior to the designated time for bid opening. (Author/SC)

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Learning #2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-189184

DATE: August 8, 1977

MATTER OF: Eugene M. Keane

DIGEST:

A hand-carried bid, delivered after bid opening officer verified accuracy of his wristwatch; announced that time for bid opening had arrived; and opened and read three bids, may not be considered on the basis of clock in reception area, unless there is evidence presented to demonstrate that bid was delivered prior to designated time for bid opening.

Eugene M. Keane (Keane) protests the rejection of his bid under solicitation No. R6-14-77-21 issued by the Department of Agriculture, Forest Service, Umatilla National Forest (Forest Service). Bid opening was scheduled for 2:00 p.m. on May 18, 1977. Keane contends that his hand-carried bid was tendered to the receptionist prior to 2:00 p.m. and was improperly rejected as late.

The contracting officer reports that shortly before 2:00 p.m. on the bid opening date, he checked the telephone company time signal and verified that his wristwatch was "right on the time to the second." At approximately 2:00 p.m., the contracting officer announced that the time for bid opening had arrived and began to open and read aloud the responses to the bid. According to the contracting officer and two other Forest Service employees present at the bid opening, after three bids had been opened and read, the receptionist phoned the contracting officer to advise him that she had just received a bid at her desk and to confirm that it was too late to accept the bid. Despite the receptionist's refusal to accept or time-stamp the bid, Keane presented his bid to the contracting officer at approximately 2:03 p.m., apparently questioning the accuracy of the Forest Service clocks.

Since the tender of Keane's bid was rejected, he discussed the matter with the contracting officer's supervisor and with the Forest Service Regional Office. At 4:00 p.m., a staff member

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of the Regional office advised the contracting officer to open the bid before Keane and several witnesses to determine the bid amount. Keane was the apparent low bidder. (We believe it would have been preferable to have held the bid unopened and have returned it to Keane after award was made. See Federal Procurement Regulations (FPR) § 1-2.303-7 (1964 ed. amend. 118)).

Keane argues that his bid should have been time-stamped upon presentation to the receptionist and that his bid was timely received according to the clock in the reception area, which clock, he contends, should govern the official time for bid opening.

Addressing the latter contention first, the FPR provides in section 1-2.402 as follows:

"(a) The official designated as the bid opening officer shall decide when the time set for bid opening has arrived and shall so declare to those present. All bids received prior to the time set for opening shall then be publicly opened and, when practicable, read aloud to the persons present, and be recorded. * * *"

This Office has repeatedly held that the declaration by the bid opening officer serves as prima facie evidence of the arrival of the bid opening time. 40 Comp. Gen. 709, 711 (1961). As we stated in Hyster Company, 55 Comp. Gen. 267, 272 (1975), 75-2 CPD 176:

"* * * Unless there is a clear record to show that the bid opening room clock showed a later time, the authorized declaration of bid opening time on the basis of the bid opening room clock must serve as the criterion for determining lateness. * * *"

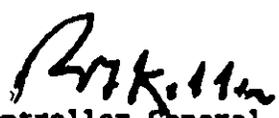
Since Keane has presented no evidence other than his unsupported statement that the time shown on the contracting officer's wristwatch varied from the telephone time signal by twenty seconds, we have no basis to conclude that the contracting officer's actions in rejecting the bid were other than proper.

With respect to Keane's assertion that his bid "would have been marked with a receipt time before 2:00 p.m." had the receptionist time-stamped his bid upon presentation, there

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are statements from Forest Service employees that refute this contention. Essentially, these statements are in agreement that Keane's bid was presented after the 2:00 p.m. bid opening. The refusal to note the time of receipt of the bid on the bid wrapper since it was late was, as the contracting officer stated, consistent with usual procedures concerning hand-carried late bids. In addition, there is nothing in the FPR which requires this notation of tender, although such would seem to be a good business practice.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States